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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 UNITED STATES OF AMERICA,
Plaintiff,

10 v.

11 SAINT-GOBAIN CONTAINERS, INC.
Defendant.

)
) Civil Action No. []
)

) Complaint
)
)

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (EPA), alleges:

NATURE OF THE ACTION

1. This is a civil action brought against Saint-Gobain Containers, Inc. (Saint-Gobain) pursuant to Section 113(b) of the Clean Air Act (the Act), 42 U.S.C. § 7413, seeking injunctive relief and civil penalties at 15 of Saint-Gobain's glass manufacturing plants for violations of Parts C and D of Title I of the Act, 42 U.S.C. §§ 7470-7492, 7501-7515, the Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) provisions of the Act; and the federally-enforceable State Implementation Plans (SIPs) for California, Illinois, Indiana, Louisiana, Massachusetts, Missouri, New Jersey, North Carolina, Oklahoma, Pennsylvania, Texas, Washington, and Wisconsin approved by EPA pursuant to Section 110 of the Act, 42 U.S.C. § 7410, which incorporate and/or implement the above-listed federal requirements.

2. The 15 glass manufacturing plants at issue in this action are located in Madera, California; Dunkirk, Indiana; Dolton, Illinois; Lincoln, Illinois; Ruston,

1 Louisiana; Milford, Massachusetts; Pevely, Missouri; Carteret, New Jersey;
2 Henderson, North Carolina; Wilson, North Carolina; Sapulpa, Oklahoma; Port
3 Allegany, Pennsylvania; Waxahachie, Texas; Seattle, Washington; and Burlington,
4 Wisconsin. Saint-Gobain constructed and/or modified certain of these glass
5 manufacturing plants without first obtaining appropriate permits authorizing the
6 construction and/or modification and subsequent operation of the plants; and failed
7 to install and employ the best available control technology (BACT) or lowest
8 achievable emissions rate (LAER) to control emissions of nitrogen oxides (NOx),
9 sulfur dioxide (SO₂) and particulate matter (PM) as the Act, the applicable federal
10 regulations and the SIPs require.

11 JURISDICTION AND VENUE

12 3. This Court has jurisdiction of the subject matter of this action
13 pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and pursuant to 28
14 U.S.C. §§ 1331, 1345, and 1355.

15 4. Venue is proper in this District pursuant to Section 113(b) of the Act,
16 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and 1395(a), because some of the
17 violations which constitute the basis of this Complaint occurred in this District.

18 NOTICES

19 5. The United States provided notice of the violations alleged herein to

1 Saint-Gobain, and to each of the states and local air authorities where the Saint-
2 Gobain glass manufacturing plants are located, pursuant to Section 113 of the Act,
3 42 U.S.C. § 7413.

4 6. The 30-day period established in Section 113, 42 U.S.C. § 7413,
5 between the notices of violation provided by the United States and the
6 commencement of this civil action has elapsed.

7 **THE DEFENDANT**

8 7. Saint-Gobain is a Delaware corporation headquartered in Muncie,
9 Indiana. Saint-Gobain is a “person” within the meaning of Section 302(e) of the
10 Act, 42 U.S.C. § 7602(e).

11 8. At certain times relevant to this Complaint, Saint-Gobain has owned
12 and operated glass manufacturing plants at the following locations:

13 Burlington, Wisconsin

14 Carteret, New Jersey

15 Dolton, Illinois

16 Dunkirk, Indiana

17 Henderson, North Carolina

18 Lincoln, Illinois

19 Madera, California

1 Milford, Massachusetts
2 Pevely, Missouri
3 Port Allegany, Pennsylvania
4 Ruston, Louisiana
5 Sapulpa, Oklahoma
6 Seattle, Washington
7 Waxahachie, Texas
8 Wilson, North Carolina.

9 **STATUTORY AND REGULATORY BACKGROUND**

10 9. As set forth in Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1),
11 the Act is designed to protect and enhance the quality of the nation's air so as to
12 promote the public health and welfare and the productive capacity of its
13 population.

14 **The National Ambient Air Quality Standards**

15 10. Section 109 of the Act, 42 U.S.C. § 7409, requires EPA to promulgate
16 national ambient air quality standards (NAAQS) requisite to protect the public
17 health and welfare for certain criteria air pollutants. The primary NAAQS are to be
18 adequate to protect the public health, and secondary NAAQS are to be adequate to
19 protect the public welfare, from any known or anticipated adverse effects

1 associated with presence of the air pollutant in the ambient air. EPA has identified
2 and promulgated primary and secondary NAAQS for SO₂, NO_x, and PM, among
3 other pollutants, which are codified at 40 C.F.R. §§ 50.4, 50.5, 50.6, 50.7, 50.10,
4 50.11, & 50.13.

5 11. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is
6 required to designate those areas within its boundaries where the air quality is
7 better or worse than the NAAQS for each criteria pollutant, or where the air quality
8 cannot be classified due to insufficient data. An area that meets the NAAQS for a
9 particular pollutant is an “attainment” area. An area that does not meet the
10 NAAQS is a “nonattainment” area. An area that cannot be classified due to
11 insufficient data is designated as “unclassifiable.”

12 12. Section 110 of the Act, 42 U.S.C. § 7410, requires each state to adopt
13 and submit to EPA for approval a SIP that provides for the attainment and
14 maintenance of the NAAQS.

15 The Prevention of Significant Deterioration Requirements

16 13. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, sets forth
17 requirements for the prevention of significant deterioration of air quality in those
18 areas designated as either attainment or unclassifiable for purposes of meeting the
19 NAAQS standards. These requirements are designed to protect public health and

1 welfare, to assure that economic growth will occur in a manner consistent with the
2 preservation of existing clean air resources and to assure that any decision to
3 permit increased air pollution is made only after careful evaluation of all the
4 consequences of such a decision and after public participation in the decision
5 making process.

6 14. Section 165(a) of the Act, 42 U.S.C. § 7475(a), and implementing
7 regulations (herein referred to as the “PSD regulations”), prohibit the construction,
8 major modification, and subsequent operation of a major emitting facility in an
9 area designated as attainment or unclassifiable unless a permit has been issued
10 setting forth emission limitations for such facility which conform to the PSD
11 requirements. 40 C.F.R. § 52.21(a)(2)(iii).

12 15. Section 169(1) of the Act, 42 U.S.C. § 7479(1), defines “major
13 emitting facility” generally as a source with the potential to emit 250 tons per year
14 (tpy) or more of any pollutant.

15 16. The PSD regulations define “major stationary source” as any
16 stationary source, which emits or has the potential to emit 250 tpy per year or more
17 of any regulated air pollutant. 40 C.F.R. § 52.21(b)(1)(i)(b).

18 17. The PSD regulations define “major modification” as any physical
19 change in or change in the method of operation of a major stationary source that

1 would result in a significant net emission increase of any pollutant subject to
2 regulation under the Act. 40 C.F.R. § 52.21(b)(2)(i).

3 18. "Significant," as pertinent to this Complaint, means an increase in
4 emissions of the following pollutants: NO_x that would equal or exceed 40 tpy; SO₂
5 that would equal or exceed 40 tpy; and PM that would equal or exceed 15 tpy. 40
6 C.F.R. § 52.21(b)(23)(i).

7 19. "Net emissions increase" is defined as "the amount by which the sum
8 of the following exceeds zero: (a) any increase in actual emissions, as defined by
9 40 C.F.R. § 52.21(b)(21) from a particular physical change or change in method of
10 operation at a stationary source; and (b) any other increases and decreases in actual
11 emissions, as defined by 40 C.F.R. § 52.21(b)(21), at the source that are
12 contemporaneous with the particular change and are otherwise creditable."

13 40 C.F.R. § 52.21(b)(3)(i).

14 20. The PSD regulations, 40 C.F.R. §§ 52.21(i) and (k), require the owner
15 or operator to obtain a permit prior to construction of a major stationary source or
16 of a major modification and, *inter alia*, to demonstrate that the construction or
17 modification, taken together with other increases or decreases of air emissions, will
18 not violate applicable air quality standards.

19 21. As set forth at 40 C.F.R. § 52.21(j), a new major stationary source or a

1 source performing a major modification in an attainment or an unclassifiable area
2 shall install and operate best available control technology, as that term is defined at
3 40 C.F.R. § 52.21(b)(12) and 42 U.S.C. § 7479(3), for each pollutant subject to
4 regulation under the Act that it would have the potential to emit in significant
5 amounts.

6 22. As set forth in 40 C.F.R. § 52.21(m), any application for a PSD permit
7 must be accompanied by an analysis of ambient air quality in the area.

8 23. As set forth in 40 C.F.R. § 52.21(n), the owner or operator of a
9 proposed source or modification must submit all information necessary to perform
10 any analysis or make any determination required under 40 C.F.R. § 52.21.

11 24. Section 161 of the Act, 42 U.S.C. § 7471, requires SIPs to contain
12 emission limitations and such other measures as may be necessary, as determined
13 under the regulations promulgated pursuant to these provisions, to prevent
14 significant deterioration of air quality in attainment areas.

15 25. A state or regional air authority may comply with Section 161 of the
16 Act, 42 U.S.C. § 7471, by being delegated by EPA the authority to enforce the
17 federal PSD regulations set forth at 40 C.F.R. § 52.21, or by having its own PSD
18 regulations approved by EPA as part of its SIP, which must be at least as stringent
19 as the requirements set forth at 40 C.F.R. § 51.166. All of the states and regional

1 air authorities with jurisdiction over the glass manufacturing plants at issue in this
2 matter have either delegated or approved PSD programs.

3 Nonattainment New Source Review

4 26. Sections 110(a)(2)(C) and (I) of the Act, 42 U.S.C. §§ 7410(a)(2)(C)
5 & (I), require that each SIP contain a program meeting the requirements of Part D
6 of the Act for the pre-construction review and permitting of new and modified
7 stationary sources located in or near areas designated as “nonattainment” for a
8 criteria pollutant pursuant to Section 107(d) of the Act, 42 U.S.C. § 7407(d).

9 27. EPA regulations at 40 C.F.R. § 51.165 require that each SIP contain
10 such a program for pre-construction review and permitting of new and modified
11 sources in or near designated nonattainment areas.

12 28. As reflected in the relevant sections of 40 C.F.R. Part 52, each of the
13 states at issue here has adopted such a program, and EPA has approved it into the
14 relevant SIP. In each case, the approved program regulates through the permitting
15 process both the construction and operation of new and modified stationary sources
16 in or near designated nonattainment areas. In some cases the program requires the
17 payment of emission fees in proportion to emission levels.

18 Enforcement Provisions

19 29. Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), provides that:

1 Whenever, on the basis of any information available to the
2 Administrator, the Administrator finds that any person has violated or
3 is in violation of any requirement or prohibition of an applicable
4 implementation plan or permit, the Administrator shall notify the
5 person and the State in which the plan applies of such finding. At any
6 time after the expiration of 30 days following the date on which such
7 notice of a violation is issued, the Administrator may . . .

8 * * *

9 (C) bring a civil action in accordance with subsection (b) of this
10 section.

11 30. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), provides that
12 “[e]xcept for a requirement or prohibition enforceable under the preceding
13 provisions of this subsection, whenever, on the basis of any information available
14 to the Administrator, the Administrator finds that any person has violated, or is in
15 violation of, any other requirement or prohibition of this subchapter . . . the
16 Administrator may . . . bring a civil action in accordance with subsection (b) of this
17 section”

18 31. Section 113(b) of the Act, 42 U.S.C. § 7413(b), authorizes the
19 Administrator to initiate a judicial enforcement action for a permanent or

1 temporary injunction and/or for civil penalties against any person whenever such
2 person has violated, or is in violation of, any requirement or prohibition of an
3 applicable implementation plan, and other requirements of the Act.

4 GENERAL ALLEGATIONS

5 32. At all times relevant to this Complaint, Saint-Gobain owned and
6 operated the glass manufacturing plants, which are identified in Paragraph 8.

7 33. At the plants, Saint-Gobain produces glass containers and bottles for
8 beverages, food, and other uses.

9 34. Except for the Dunkirk plant, at all times relevant to this Complaint,
10 Saint-Gobain's glass manufacturing plants identified in Paragraph 8 have been
11 "major stationary sources" as defined by 40 C.F.R. § 52.21(b)(1)(i)(b).

12 35. EPA has conducted investigations of Saint-Gobain's glass
13 manufacturing plants, which included site inspections, review of permitting history
14 and emissions data, and analysis of other relevant information obtained from Saint-
15 Gobain concerning construction and operation of such plants. The United States
16 alleges the following based on the results of EPA's investigation, information and
17 belief.

FIRST CLAIM FOR RELIEF

(PSD Violations)

36. Paragraphs 1 through 35 are realleged and incorporated herein by reference.

37. At various times, Saint-Gobain commenced construction or constructed major modifications, as defined in the Clean Air Act, at one or more of its plants. These major modifications included, but are not limited to: furnace rebuilds or construction of new furnaces at various plants listed in Paragraph 8. By way of example, from 1992 to 1994, at the Seattle plant, Saint-Gobain enlarged two of the furnaces, converted two of the furnaces from regenerative to oxyfuel, and converted one furnace from all electric to oxyfuel. Saint-Gobain also made additional major modifications to its plants beyond those described in this paragraph. These modifications resulted in significant net emissions increases, as defined by 40 C.F.R. § 52.21(b)(3)(i), of one or more of the following pollutants: NO_x, SO₂ and/or PM.

38. From the time it performed major modification(s) to its glass manufacturing plants, Saint-Gobain has been in violation of Section 165(a) of the Act, 42 U.S.C. § 7475(a), the PSD regulations set forth in 40 C.F.R. § 52.21, and the corresponding SIPs, by undertaking such major modification(s) and operating

1 its glass manufacturing plants without first obtaining a PSD permit as required by
2 40 C.F.R. § 52.21(a)(2)(iii)); and by failing to install and operate BACT for control
3 of criteria pollutants as required by 40 C.F.R. § 52.21(j).

4 39. Unless restrained by an order of this Court, the violations of the Act
5 alleged in this First Claim for Relief will continue.

6 40. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), the
7 violations set forth above subject Saint-Gobain to injunctive relief and civil
8 penalties of up to \$25,000 per day for each violation prior to January 30, 1997; up
9 to \$27,500 per day for each such violation between January 30, 1997 and March
10 15, 2004; and up to \$32,500 per day for each such violation between March 15,
11 2004, and January 12, 2009; and up to \$37,500 per day for each such violation
12 occurring after January 12, 2009, pursuant to the Federal Civil Penalties Inflation
13 Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701; see
14 40 C.F.R. Part 19, 69 Fed. Reg. 7126 (Feb. 13, 2004).

15 SECOND CLAIM FOR RELIEF

16 (Nonattainment New Source Review Violations)

17 41. Paragraphs 1 through 35 are realleged and incorporated herein by
18 reference.

19 42. At various times, Saint-Gobain commenced construction or

1 constructed major modifications, as defined in the Clean Air Act, at one or more of
2 its plants. These major modifications included, but are not limited to: furnace
3 rebuilds or construction of new furnaces at various plants listed in Paragraph 8.
4 Saint-Gobain also made additional major modifications to its plants beyond those
5 described in this paragraph. One or more of these major modifications occurred at
6 plants located in a nonattainment area for SO₂, PM and/or ozone. These major
7 modifications resulted in significant net emission increases of SO₂ and/or NO_x, as
8 defined by the Clean Air Act, 42 U.S.C. §§ 7501-7515.

9 43. Saint-Gobain violated and continues to violate the Nonattainment
10 NSR provisions of the Clean Air Act by, among other things, undertaking such
11 major modifications and operating the facility after the modifications without
12 obtaining a Nonattainment NSR permit as required by the applicable SIP. In
13 addition, as required by 42 U.S.C. §§ 7501-7515, Saint-Gobain has not:
14 (1) installed and operated LAER for control of SO₂ and NO_x; (2) obtained and
15 operated with federally enforceable emission offsets at least as great as the
16 modified source's emissions; (3) certified that all other major sources that they
17 own or operate are in compliance with the Clean Air Act; and (4) demonstrated
18 that the benefits of the modifications significantly outweigh the environmental and
19 social costs imposed as a result of the modifications.

1 44. As such, Saint-Gobain has violated the Nonattainment NSR
2 provisions of Part D of Title I of the CAA, 42 U.S.C. §§ 7501-7515, that EPA has
3 approved into the relevant SIPs pursuant to Sections 110(a)(2)(C) and (I) of the
4 Act, 42 U.S.C. §§ 7410(a)(2)(C) & (I), and 40 C.F.R. § 51.165, by failing to
5 comply with limits, terms and conditions in permits issued pursuant to such
6 programs; by failing to apply for and obtain necessary permits prior to performing
7 major modification and/or construction; and by failing to represent as necessary in
8 its applications the emission level or air quality consequences of proposed
9 construction or modification.

10 45. Unless restrained by an order of this Court, the violations of the Act
11 alleged in this Second Claim for Relief will continue.

12 46. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), the
13 violations set forth above subject Saint-Gobain to injunctive relief and civil
14 penalties of up to \$25,000 per day for each violation prior to January 30, 1997; up
15 to \$27,500 per day for each such violation between January 30, 1997 and March
16 15, 2004; and up to \$32,500 per day for each such violation between March 15,
17 2004, and January 12, 2009; and up to \$37,500 per day for each such violation
18 occurring after January 12, 2009, pursuant to the Federal Civil Penalties Inflation
19 Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701; see

1 40 C.F.R. Part 19, 69 Fed. Reg. 7126 (Feb. 13, 2004).

2 PRAYER FOR RELIEF

3 WHEREFORE, the United States of America requests that this Court:

4 1. Permanently enjoin Saint-Gobain from operating the glass melting
5 furnaces at the Saint-Gobain glass manufacturing plants, including the construction
6 of future modifications, except in accordance with the Clean Air Act and
7 applicable regulatory requirements;

8 2. Order Saint-Gobain to remedy its past violations by, among other
9 things, requiring Saint-Gobain to install, as appropriate, the best available control
10 technology, or such other emissions control technology required by law, on the
11 glass melting furnaces at the Saint-Gobain glass manufacturing plants for each
12 pollutant subject to regulation under the Clean Air Act;

13 3. Order Saint-Gobain to apply for permits that are in conformity with
14 the requirements of the Clean Air Act and SIP requirements;

15 4. Assess a civil penalty against Saint-Gobain of up to \$25,000 per day
16 for each violation of the Act occurring prior to January 30, 1997, up to \$27,500 per
17 day for each violation of the Act occurring between January 30, 1997 and March
18 15, 2004, and up to \$32,500 for each violation of the Act occurring between March
19 15, 2004 and January 12, 2009; and up to \$37,500 for each violation occurring

1 after January 12, 2009;

2 5. Award Plaintiff its costs of this action; and,

3 6. Grant such other relief as the Court deems just and proper.

5 Respectfully Submitted,

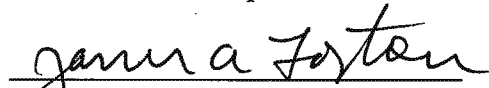
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